



U.S. Citizenship
and Immigration
Services

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APR 27 2004

FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the
Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

Attached is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for temporary resident status as a special agricultural worker was denied by the Director, Western Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director denied the application because the applicant's landscaping duties did not constitute qualifying agricultural employment.

On appeal, the applicant reiterates his claim to eligibility for temporary residence as a special agricultural worker under section 210 of the Immigration and Nationality Act (INA).

An applicant must have engaged in qualifying agricultural employment, which has been defined as "seasonal agricultural services," for at least 90 man-days during the twelve-month period ending May 1, 1986, pursuant to 8 C.F.R. § 210.1 (h).

Section 210(h) of the INA, 8 U.S.C. 1160, defines "seasonal agricultural services" as the performance of field work related to the planting, cultural practices, cultivating, growing, and harvesting of fruits and vegetables of every kind and other perishable commodities, as defined in regulations by the Secretary of Agriculture.

According to 7 C.F.R. § 1d.7, "other perishable commodities" means those commodities which do not meet the definition of fruits or vegetables, that are produced as a result of seasonal field work, and have critical and unpredictable labor demands. "Horticultural specialties," or nursery products as defined in 7 C.F.R. § 1d.6 are included as other perishable commodities due to their reliance on seasonal and labor intensive field work.

"Field work" means any employment performed on agricultural lands for the purpose of planting, cultural practices, cultivating, growing, harvesting, drying, processing, or packing any fruits, vegetables, or other perishable commodities. 7 C.F.R. § 1d.4

"Agricultural lands" means any land, cave, or structure, except packinghouses or canneries, used for the purpose of performing field work. 7 C.F.R. § 1d.2.

Clearly, nurseries are agricultural land because they are used for the purpose of performing field work in perishable commodities, namely horticultural specialties. Thus, it is possible for an alien who engaged in field work activities as defined above with horticultural specialties in a nursery to qualify for temporary residence, as he was engaged in field work on agricultural land. On the other hand, an alien who worked with horticultural specialties as a landscaper on commercial and residential properties would not qualify because such properties are not agricultural land, as they are not used for the purpose of performing field work. While the purpose of a nursery is the production of horticultural specialties, the same cannot be said of yards and other properties on which landscaping takes place.

On the Form I-700 application, the applicant claimed 80 man days cultivating peaches and grapes for [REDACTED] in Fresno County, California from April 1985 to September 1985, and 120 man days harvesting and planting "trees" for [REDACTED] California from December to August 1986. However, the applicant failed to submit any supporting documentation to corroborate his claims of employment for [REDACTED]. Without such evidence, the applicant's claims of employment for both [REDACTED] cannot be considered as having established the performance of at least 90 man-days of qualifying agricultural services during the twelve-month period ending May 1, 1986.

The record shows that the applicant submitted an employment letter signed by [REDACTED] In his letter, [REDACTED] indicated that his company, [REDACTED] had employed the applicant as a laborer from December 7, 1985 to August 13, 1986. [REDACTED] stated that the applicant was subsequently rehired by this enterprise on October 26, 1988, and that he remained employed as a laborer through November 3, 1988, the date the letter was executed. While [REDACTED] did not specify the nature of work performed by the applicant, the letterhead of the separate employment letter specifically reads as follows in describing the firm's operations: "Commercial Landscape Installation" and "Commercial [REDACTED]"

The director concluded the applicant had performed only landscaping duties during the eligibility period from May 1, 1985 to May 1, 1986, and denied the application on February 28, 1992.

On appeal, the applicant states that it his belief that he is eligible for temporary residence as a special agricultural worker under section 210 of the INA. However, the applicant failed to address the fact that the only documentation he submitted in support of any of his claims of employment indicates that he performed landscaping duties. Specifically, the descriptive letterhead on the employment verification letter submitted in support of the claim describes the firm's operations as [REDACTED] and "Commercial [REDACTED]" Therefore, it is concluded that the applicant performed landscaping duties on commercial and residential properties belonging to clients of Ayres & Hogan. As stated above, such commercial and residential properties are not "agricultural land," as they are not used for the purpose of raising perishable commodities. As such properties are not agricultural land, it cannot be held that the landscaping duties performed on them constitute "field work."

The applicant has, therefore, failed to establish the performance of at least 90 man days of qualifying agricultural employment during the twelve month eligibility period ending May 1, 1986.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.